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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91177804
Party	Plaintiff AMERIFIT, INC.
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Submission	Opposition/Response to Motion
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Date	01/15/2008
Attachments	OPPOSITION TO MOTION TO EXTEND DISCOVERY.pdf (4 pages)(253902 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No.	78971771
Filed:	September 11, 2006
Mark:	ESTROVIVE
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AMERIFIT, INC.

Opposer,

v.

GEORGE K. ZOOROB

Applicant.

Opposition No: 91177804

OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO EXTEND DISCOVERY

Opposer Amerifit, Inc. submits its Opposition to Applicant's Motion to Extend Discovery.

Applicant's suggestion that extending the discovery deadline is somehow necessary because it did not receive Amerifit's discovery until December 28, 2007, is unnecessary, inappropriate and contrary to TTAB practice and procedure. TBMP § 403.04 provides that

Mere delay in initiating discovery does not constitute good cause for an extension of the discovery period. Thus, a party which waits until the waning days of the discovery period to serve interrogatories, requests for production of documents and things, and/or requests for admission will not be heard to complain, when it receives responses thereto after the close of the discovery period, that it needs an extension of the discovery period in order to take "follow-up" discovery.

TBMP § 403.04

Applicant's Motion to Extend fails on its face to provide any reason to extend the discovery deadline. Applicant does not provide any reason for the requested extension, or even identify the date to which the discovery deadline should be extended. Instead, Applicant requests an undefined extension based solely upon the fact that he received Amerifit's discovery on December 28, 2007.

Based on the plain language of the TBMP, the timing of Amerifit's discovery is irrelevant to Applicant's request. Applicant had every opportunity to serve discovery prior to December 30, 2007. Applicant failed to do so. Instead, Applicant sat on its rights, and now seeks to delay the proceedings by requesting an indefinite extension for an unidentified purpose. The Board should not contravene the plain language of the TBMP; instead, it should follow the plain instructions of Section 403.04 by denying Applicant's Motion.

Even if Applicant identified the reasons for his request, those reasons would not justify extending the discovery deadline. While discovery extensions are certainly appropriate in some cases, the plain language of TBMP § 403.04 provides that a party's dilatory conduct party is not an appropriate basis for extending discovery.

Applicant was clearly dilatory in this case. Applicant could have served discovery at any time during the discovery period, including the time that elapsed between the date that he received Amerifit's discovery and the discovery deadline. Applicant provides no explanation for his failure to do so; accordingly, the Board should find that his conduct was dilatory, that there is no need to extend the discovery deadline, and deny Applicant's Motion.

CONCLUSION

The TTAB should deny Applicant's defective Motion. Applicant fails to provide any basis for extending the discovery deadline, fails to provide any explanation for his failure to

serve discovery prior to the expiration of the discovery deadline, and fails to identify the date to which the deadline should be extended. Accordingly, Applicant's Motion should be denied.

Dated this 15th day of January, 2008.

RESPECTFULLY SUBMITTED,
Amerifit, Inc.

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CERTIFICATE OF SERVICE

I, Daniel E. Bruso, Esq., counsel to Opposer Amerifit, Inc. in the above-captioned matter, certify that, on the 15th day of January, 2008, I served a copy of the foregoing to document, via first class mail, postage prepaid, upon:

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/Daniel E. Bruso/
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